George E. Masker, Inc. *and* **Gant Edward Phillips.** Case 32-CA-3279

April 9, 1982

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On October 23, 1981, Administrative Law Judge James M. Kennedy issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order.[2]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, George E. Masker, Inc., San Francisco, California, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

[1] Respondent asserts that the Administrative Law Judge's resolutions of credibility, findings of fact, and conclusions of law are the result of bias. After a careful examination of the entire record, we are satisfied that this allegation is without merit. There is no basis for finding that bias and partiality existed merely because the Administrative Law Judge resolved important factual conflicts in favor of the General Counsel's witnesses. As the Supreme Court stated in *N.L.R.B.* v. *Pittsburgh Steamship Company*, 337 U.S. 656, 659 (1949), "[T]otal rejection of an opposed view cannot of itself impugn the integrity or competence of a trier of fact." Furthermore, it is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 138 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] Respondent has requested oral argument. This request is hereby denied as the record, the exceptions, and the brief adequately present the issues and the positions of the parties.

In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

DECISION

STATEMENT OF THE CASE

JAMES M. KENNEDY, Administrative Law Judge: This case was heard before me in Oakland, California, on August 13-14, 1981, pursuant to a complaint issued by the Regional Director for Region 32 of the National Labor Relations Board on February 4, 1981, and which is based on a charge filed by Gant Edward Phillips, an individual (herein called Phillips), on December 12, 1980.[1] The complaint alleges that George E. Masker, Inc. (herein called Respondent), has engaged in certain violations of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended (herein called the Act).

Issues

Whether Respondent unlawfully threatened to discharge and thereafter discharged its employee, Phillips, because he pursued a grievance under the collective-bargaining agreement regulating his employment.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Briefs, which have been carefully considered, were filed on behalf of the General Counsel and Respondent.

Upon the entire record of the case, and from my observation of the witnesses and their demeanor, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent admits it is a California corporation with an office and place of business in Oakland, and is engaged as a painting contractor in the building and construction industry. The complaint originally alleged that Respondent's annual purchase of goods and services directly from suppliers outside the State of California exceeded $50,000. Respondent's answer denied that allegation as it asserted it had "insufficient information and belief to enable it to answer the allegation . . . . Furthermore, it appears from colloquy between myself and counsel that Respondent failed to complete and return to the Regional Office a commerce data questionnaire which would have enabled the General Counsel to more intelligently deal with the commerce issue.

Faced with the denial, the General Counsel issued a subpena seeking, *inter alia*, records showing all purchases of supplies and materials between December 18, 1979, and December 19, 1980. Additionally, the General Counsel obtained an affidavit (G.C. Exh. 3) from an official of DeNarde Construction Company, with whom Respondent regularly does business. That affidavit contains facts, which, if credited, would show that Respondent, by virtue of its business relationship to DeNarde, satisfies the Board's indirect outflow standard.

At the hearing Respondent moved to revoke that portion of the subpena dealing with the allegation that Respondent met the direct inflow standard, saying it would be too burdensome to produce the material sought and that it would take at least 60 days to do so. I denied the petition to revoke and ordered production of the documentation. Respondent did not comply with my directive. Thereafter counsel for the General Counsel amended the complaint in three respects. First, he moved to allege that Respondent's business with DeNarde Con-

[1] All dates herein refer to 1980, unless otherwise indicated.

struction Company met the indirect outflow standard. Second, he alleged, based on the testimony of Respondent's vice president, Wally Semjenow, that Respondent met the indirect inflow standard.

During all this, Respondent's counsel gave me the impression that he would be happy to acknowledge jurisdiction if only he could be presented with some facts which would permit him professionally to admit jurisdiction. He contended he simply did not know the facts.

Later, as the hearing progressed, I observed that Respondent appeared to be a member of a multiemployer collective-bargaining association and suggested to both counsel that perhaps it would be easier to assert jurisdiction in that fashion as there would be little doubt that the association and its members would meet one of the Board's standards. After calling a witness on the issue, the General Counsel amended the complaint for the third time and alleged that Respondent was a member of a multiemployer collective-bargaining association and, by virtue of its membership, due to the interstate nature of that association, met a Board standard.

Respondent now complains in its brief that my suggestion demonstrates bias and deprived it of due process. The assertion is misplaced. Section 102.35 of the Board's Rules and Regulations, Series 8, as amended, mandates that I "inquire fully into the facts as to whether the Respondent has engaged in or is engaging in an unfair labor practice affecting commerce . . . ." Furthermore, under subsection (g) of that rule, I am empowered "to hold conferences for the settlement or simplification of the issues by consent of the parties . . . ." In a case of this nature, where Respondent, first by its answer claimed not to know the facts, and second, by its attitude at the hearing, claimed it wished to know the facts before it could make an intelligent decision, I deemed it within my authority to suggest, by way of a conference, which was conducted informally, that the issue could be simplified by casting about for alternatives which Respondent might accept. In the final analysis, it appears that Respondent simply did not wish to cooperate at all, though giving the appearance that it did. This is best exemplified by its failure to file the commerce data questionnaire, its claim that it had insufficient knowledge of its own business to answer the complaint and later by its refusal to abide by my order to comply with the subpena, averring that it needed 60 days to do so. It can hardly be said in that circumstance that it has been deprived of due process or that I was somehow biased.

During the course of our colloquy, Respondent's counsel, after consulting with Semjenow, admitted that Respondent purchased paint and materials valued in excess of $27,000 from sources directly outside the State of California. That admission satisfies legal jurisdiction in the sense that it has demonstrated that materials and supplies have come to Respondent directly from outside the State. It may be true that that figure does not satisfy the Board's direct inflow standards as set forth in *Siemons Mailing Service*, 122 NLRB 81 (1958), setting forth a $50,000 minimal figure. But, as the Board said in *Tropicana Products, Inc.*, 122 NLRB 121, 123 (1958), "the adoption of such standards in no way precludes the Board from exercising its statutory authority, in any properly filed case, where legal jurisdiction alone is proven, if the Board is satisfied that such action will best effectuate the policies of the Act," citing *N.L.R.B.* v. *W. B. Jones Lumber Company, Inc. and Lumber and Sawmill Workers' Union Local 2288, AFL*, 245 F.2d 388 (9th Cir. 1957). In *Tropicana* at 123:

> The Board has determined that it best effectuates the policies of the Act, and promotes the prompt handling of cases, to assert jurisdiction in any case in which an employer has refused, upon reasonable request by Board agents, to provide the Board or its agents with information relevant to the Board's jurisdictional determinations, where the record developed at a hearing . . . demonstrates the Board's statutory jurisdiction, irrespective of whether the record demonstrates that the Employer's operations satisfy the Board's jurisdictional standards.

In this case Respondent refused to cooperate with the Regional Office by supplying it with the commerce data questionnaire, filed a questionable answer and later refused to comply with a proper subpena for such information. Accordingly, I conclude, based on its admission, that it does $27,000 directly in commerce that it will effectuate the policies of the Act for the Board to assert jurisdiction herein based upon its holding in *Tropicana*.[2]

II. THE LABOR ORGANIZATION INVOLVED

At the hearing, Respondent admitted, and I find, that Painters Union, Local No. 4, is a labor organization within the meaning of Section 2(5) of the Act.

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[2] Furthermore, it appears that, based on secondary evidence, permissible in *Tropicana* cases, that Respondent is a member of the Painting and Decorating Contractors Association of East Bay Chapters, Inc., and that at least 1 member of that association does business in 10 western States. It further appears that those members annually purchase materials and supplies exceeding, in the aggregate, $50,000 from sources outside California. It has long been held that jurisdiction may be asserted in that circumstance. *Insulation Contractors of Southern California, Inc., Insulation Contractors of Southern California, and Plant Insulation Company*, 110 NLRB 638 (1954); *Fisherman's Marketing Association of Washington, Inc.*, 114 NLRB 189 (1955); and *Laundry Owners Association of Greater Cincinnati*, 123 NLRB 543 (1959).

Finally, although it is not necessary to decide the issue, it appears likely that I could rely on the affidavit of Domenic Cola, the vice president of DeNarde Construction Company. It is true that the affidavit is hearsay but it appears admissible under Fed. R. Evid. 804 (b)(5). Cola was unavailable within the meaning of that rule as the General Counsel was unable to procure his attendance by process or other reasonable means and the General Counsel advised Respondent a week prior to the instant hearing that he intended to rely upon the affidavit. Furthermore, the statement has sufficient circumstantial guarantees of trustworthiness. See, generally, *Helen L. Huff* v. *White Motor Corporation*, 609 F.2d 286 (7th Cir. 1979). In the affidavit Cola states that DeNarde Construction paid Respondent $214,000 for work as a subcontractor on the project in question here. DeNarde was the general contractor on this remodeling project for the housing authority of the city and county of San Francisco. Furthermore, DeNarde is also a defense contractor performing construction work in Hawaii for the United States Navy on contract valued at $5 million dollars. Clearly, DeNarde meets both the direct inflow and direct outflow standards of the Board. Therefore, the $214,000 it paid Respondent for the housing authority job places Respondent in commerce. However, even though the affidavit is legally sufficient, I specifically rely on the *Tropicana* doctrine in order to find that the Board should assert jurisdiction over Respondent.

III. THE ALLEGED UNFAIR LABOR PRACTICES

As noted, Respondent was a subcontractor to DeNarde Construction Company for its Hunter's Point remodeling project for the housing authority of the city and county of San Francisco. It was bound to a multiemployer, multiunion collective-bargaining agreement known as the Bay Area Painting & Decorators Agreement. The Hunter's Point project fell within the geographical jurisdiction of one of those unions, Painters Union, Local No. 4.

Phillips' Testimony

Phillips was hired to work on that project on July 15 as an apprentice painter. He joined Local 4 as well as its apprenticeship program. For the first portion of his employment he was supervised by Inside Foreman Al Black. Fernando Ramos, as of August, was the outside foreman. On September 17, Ramos took over both the inside and outside responsibilities and Phillips began reporting to him regularly; he had worked for Ramos on previous occasions when Ramos had "borrowed" him from Black.

Phillips testified that on Friday, September 12, he was due to receive a paycheck. Ramos distributed the paychecks to all the other members of the crew but did not have one for him. He says when he asked Ramos where his check was, Ramos asked, "Didn't I give it to you?" Phillips said that he had not. Ramos looked for it and then said, "It's not here."

Phillips returned to work on the following Monday, September 15. Early that morning, at approximately 7:45 a.m., he asked Black where his check was. Black said he had told the shop about the problem on Friday, but had no other response. About 4:30 p.m., the end of the workday, Black announced that there would be a layoff and Phillips was to be included,[3] but he and the others were told to report back each day to see if there would be work.

Between 4:30 and 5 p.m. Phillips telephoned a union hall and spoke to business agent Bill Daly. He told him he still had not received his paycheck. Daly told him not to say anything more about it; he would take care of it.

Despite the fact that he had been laid off the evening before, Phillips appeared at the site on Tuesday, September 16, principally to see if his check had arrived but also to see if there was work. Black told him that the superintendent, Jack Thomas, would be on the job later and Phillips should speak to him. Black also put Phillips to work. At approximately 10 or 10:30 a.m., Thomas appeared. Phillips explained to him that he had not received his paycheck the preceding Friday. He says Thomas told him there had been a mixup in the checks; his had accidentally been sent to Monterey but would be at the site by 11 a.m. Phillips says he actually got the check at 4:30 p.m. from Fernando Ramos. Phillips says that he told Daly by phone that evening that the waiting time had not been included in the check he had been given.

[3] Ramos testified that there were no layoffs at the Hunter's Point project during the months of September and October. Respondent did not call Black to specifically deny Phillips' testimony.

The collective-bargaining agreement provides that wages shall be paid on Friday for the week ending the Wednesday before. Article 8, section 20, further provides that if the paychecks are not issued at that time, the employer is obligated to pay the employee "waiting time" at the rate of 8 hours per day "straight time." It also obligates the employee who wishes to claim waiting time to promptly report the failure to pay to "an authorized representative of the union . . . ." According to Phillips' testimony, corroborated by Daly, he had so complied.

Phillips testified that on Wednesday, September 17, Daly appeared at the jobsite together with James Fields, the assistant director of the Bay View-Hunter's Point Non-Profit Community Development Corporation and in charge of that group's affirmative action program. Also present was an affirmative action officer of the San Francisco housing authority.

It appears from the mutually corroborative testimony of Daly and Fields that they first went to Phillips and asked him if he had received his paycheck. He told them that he had, but had not gotten waiting time. Daly and Fields then went to Ramos and asked why there was no waiting time submitted with the paycheck. Ramos told them that Phillips, the previous Friday, had said he would go to Oakland to pick up his check. In that circumstance Ramos believed the Company had no obligation to pay waiting time. They then asked Phillips if he had agreed to go to Oakland to get the check. Phillips denied that he had. At that point Ramos and Phillips were brought together and each repeated his version. Ramos insisted Phillips had agreed to go to Oakland on Friday to get the missing check; Phillips denied it. Ramos admits getting into a "cussing match" with Phillips, contending it was the first time he had ever done so with an employee. The ensuing argument was quickly cut off by Daly who said there was no point in arguing about it at the site; the Union would take the matter through the grievance procedure.

Later that afternoon, at approximately 1 p.m., Ramos went to Phillips where he was working and told Phillips he "didn't have to go along with the grievance." He asked Phillips for whom he worked, "the Union? Or did he work for Masker?" Phillips replied he worked for Masker. Ramos said, "Well, if you go along with this grievance, I couldn't guarantee you would have a job after this." Phillips said he would think about it and get back to him.

According to Phillips, on September 22, he reported for work but Ramos told him to "take a couple of days off." He says he returned on September 24 and was told to take another couple of days off. He asked Ramos what he meant by "a couple of days"; "did he mean two days?" Phillips testified Ramos replied "I don't have to explain anything to you. I'm the foreman." Phillips said he understood, but in terms of making a living he needed to know what Ramos was talking about. Ramos replied again he did not have to explain anything; Phillips was to take a couple of days off. Phillips asked if he should apply for unemployment or look for another job, but Ramos repeated "I don't have to explain anything to you." Phillips then left.

Phillips testified that he again reported for work on September 26, but Ramos told him there was no work and he should call the shop about work. Later that morning Phillips did so and spoke to Superintendent Thomas who told him he did not do the hiring or firing, that Phillips should report to Ramos. On the following Monday, September 29, Phillips did so but Ramos again said there was no work. On Tuesday, September 30, he again telephoned Thomas who told him to contact Ramos. He again went to the job with similar results. He says he went back every day during that week to try and go to work but each time Ramos rebuffed him. On approximately October 6 or 7 Phillips learned from Ramos that Ramos had hired other employees.

Respondent's Version

While Respondent's version of the facts is similar, it is significantly different in terms of dates and import. It contends that the late check incident occurred a week later, i.e., September 18, and that when the check was finally issued on September 23 Phillips picked it up and left work and did not show up for several days. Ramos asserts he believed Phillips had "quit."

Superintendent Jack Thomas testified that one evening in the "middle of September" Ramos called him and told him that Phillips' check was not in the stack. He says that occurred on a Thursday evening and in response to a leading suggestion by counsel agreed that it was a Thursday before a Black Friday.[4] The Black Friday in question was September 19 and Thomas' testimony would lead one to the conclusion that the failure to pay the check was on Thursday, September 18, nearly a week after Phillips said it occurred.

In any event Thomas responded to Ramos' telephone call saying he would check it out. He kept Ramos on the line while he looked for it. He says he discovered the check "in the drawer," and told Ramos he had the check. Ramos left the line and Thomas believes Ramos spoke to Phillips. Shortly thereafter, Ramos returned to the line and said Phillips would come to the Oakland shop to pick it up. Thomas says he was relieved because it meant he did not have to run the check over to San Francisco. Thomas says he never spoke to Phillips.

Ramos' version differs from both that of Phillips and Thomas. He says, after being led, that on Thursday night, September 18, he went through all the checks about 4 p.m. He says he noticed Phillips' check was missing and told Phillips so. Ramos said, "I asked him if he could pick it up [in Oakland] or let me know what he wanted to do about it. He said he would." Ramos said Phillips then went to the phone where he called Jack Thomas. Ramos, without any explanation regarding how he learned it, says Thomas told Phillips he had the check right in front of his desk.[5]

Ramos said that on the following Monday, September 22, Phillips came to the job and asked him for his check. Ramos replied, "I thought you picked it up. That's what you told me." At that point they got into an argument, shouted some cuss words and Ramos says he "told the man it would be best if he go home and take the rest of the day off." Phillips did. On Tuesday, according to Ramos, Phillips came to the site, picked up his check and then left. Ramos said Phillips did not work that day[6] although he appeared for work "a couple of days after the 23rd." Ramos said, "I talked to the guy and I told the guy I couldn't put him to work just any time he comes by. I thought the man quit for real. When he left the 23rd, he left without telling me, 'I'm coming back,' or quitting, or anything like that. He just left, and that was about it." Ramos says he thought Phillips had quit.

Also on September 23, according to Ramos, Business Agent Daly from the Union came to discuss the late check. Ramos said he explained to Daly that he knew the rule book but said "mistakes will happen sometimes. I think that if the man would have said something to me a lot different, I would have arranged it a lot different to go and pick up his check the same day." Phillips apparently had stayed nearby after obtaining his check. Ramos agreed that Daly and "a man from affirmative action" were present.[7] He agreed that he and Phillips had a difference of opinion in their presence regarding what was said the night the check should have been issued.

Ramos denies ever telling Phillips he could not guarantee his job if he pursued the grievance and he denies letting Phillips go because of his "waiting time" claim. He further agrees that he hired a new employee the first Monday of October and that Phillips learned of it and asserted that he should have been put to work instead.

Respondent did not pay Phillips his waiting time check until April 21, 1981. Respondent caused to be typed a statement on that check that it was "wages for 9-19, 20, 21, 22, 1980." John Davidson, a union official, asserts that the check was not issued to Phillips until a second grievance over the matter was filed. The first had been resolved, he says, by a joint adjustment board ruling in Phillips' favor, but Respondent did not comply. Accordingly, he sought a second ruling later. That resulted in the issuance of the check.

IV. ANALYSIS AND CONCLUSIONS

The facts of this case depend principally upon resolution of the credibility conflicts. Certainly there is some reason to believe Respondent's assertion that Phillips is off by a week regarding the late paycheck incident. I note that the testimony of Superintendent Jack Thomas and Foreman Fernando Ramos is inconsistent in at least one respect. That is the question of whether Thomas spoke to Phillips on the evening the check was late. Thomas said he did not; Ramos said he did. Yet, Ramos, without explaining how he knew, says Thomas told Phillips he had the check in Oakland. How could he know

[4] "Black Friday" is a slang term for a no-work Friday as set forth in the collective-bargaining agreement.

[5] Fernando Ramos' brother, Matt, testified he was present during this incident and he heard Phillips say he would pick up his check in Oakland. He also say there was some additional discussion about Phillips obtaining a ride to Oakland with someone who was going that direction. His testimony is discounted. See "Analysis" section.

[6] Phillips was paid 2 hours' "show up" time that day.

[7] Fields, the "man from affirmative action" said Phillips had paint speckles on his face, suggesting he had been working that morning. His testimony therefore corroborates Phillips and tends to discredit Ramos.

that if Phillips, not he, had spoken to Thomas? Of the two versions, Thomas' seems more likely than Ramos'. But Phillips did not testify to either version. He said he did not speak to Thomas until the following Monday and that Thomas then told him the check had been mistakenly sent to Monterey.

Furthermore, I found Ramos' testimony to be overly assertive. He says it was he who noticed Phillips' check was missing and told him so before issuing any checks to the others. That does not seem likely; Phillips' testimony more comports with probability. He testified that Ramos handed out all the paychecks and it was not until Phillips realized he had been omitted that he called it to Ramos' attention and that Ramos expressed surprise. In those circumstances, regardless of Thomas' testimony, it is clear to me that Ramos is capable of dissemblance.[8]

Accordingly, I am unable to credit Ramos over Phillips who displayed no such tendency. Indeed, Phillips testified in a straightforward, dispassionate manner and was corroborated in most respects by two disinterested witnesses, Business Agent Daly and community development official Fields. I credit Phillips' version.

With respect to the date question, I note that even Thomas was not clear about the dates and both he and Ramos were led by counsel to some extent to accept the dates they asserted. It is, however, equally true that neither Daly nor Fields was certain about the dates either. Certainly the matter is not resolved by the timesheet presented by Respondent, for under the testimony of either Phillips or Ramos, Phillips left work on September 23. Ramos said it was because Phillips left after getting his check; Phillips said Ramos told him to take a couple of days off. One of the individuals who might have shed light on the date was Foreman Al Black whom Respondent did not call but who, according to Phillips, announced a layoff for September 15, aborted the following day. In view of the fact that Respondent did not call Black, it seems likely to me that he would have testified in corroboration of Phillips. In any event Fields' testimony that Phillips had paint on him suggests the September 17 date, cited by Phillips for the confrontation is correct. I find that it is. It follows that the paycheck was missing on September 12 and that Respondent's entire version to the contrary is rendered doubtful.

Accordingly, I conclude that Phillips' testimony is fully credible and I accept it as my finding of fact. Therefore, I credit his testimony that in the afternoon of September 17, following the visit of Daly, Fields, and the housing authority official, Ramos told him that if he pursued the waiting time grievance he could not guarantee his job. That remark is a violation of Section 8(a)(1) as it was intended to coerce and restrain Phillips in the exercise of his statutory right to insist upon the enforcement of a provision in the collective-bargaining agreement.

Furthermore, I find that Respondent's reason for refusing to continue to employ Phillips as of September 23 is unsupported by credible facts. Ramos claims Phillips left work on September 23 and did not return until after Ramos concluded he had quit. Since I cannot credit Ramos in any way, his testimony is rejected in favor of that given by Phillips. Phillips said Ramos told him to take a couple of days off and to check back thereafter. Indeed, he did so on a regular basis, often speaking to Respondent's superintendent by telephone. Later, in early October Ramos hired someone else. Clearly Ramos had both the need for an additional painter and the opportunity to continue to employ Phillips. He did not do so and the reason he advances to justify it is disbelieved. The only remaining reason for him to have acted as he did was as a reprisal for Phillips permitting the union to pursue the waiting time grievance, a fulfillment of the earlier threat. Such a decision violates Section 8(a)(1) of the Act. *Merlyn Bunney and Clarence Bunney, Partners, d/b/a Bunney Bros. Construction Company*, 139 NLRB 1516, 1519 (1962); *N.L.R.B.* v. *Interboro Contractors, Inc.*, 388 F.2d 495, 500 (2d Cir. 1967); cf. *H. C. Smith Construction Co.*, 174 NLRB 1173 (1969), enfd. 439 F.2d 1064 (9th Cir. 1971).[9]

V. THE REMEDY

Having found that Respondent has violated Section 8(a)(1) of the Act, I shall recommend that it be ordered to cease and desist therefrom, and to take certain affirmative action designed to effectuate the policies of the Act. The affirmative action shall include an order requiring Respondent to immediately offer Phillips reinstatement to his former job or, if that job no longer exists, to a substantially equivalent job. In addition, Respondent shall be required to make Phillips whole for any loss of pay he may have suffered as a result of the discrimination against him in the manner prescribed by the Board in *F. W. Woolworth Company*, 90 NLRB 289 (1950). Interest on the backpay shall be computed as set forth in *Florida Steel Company*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

CONCLUSIONS OF LAW

1. Respondent George E. Masker, Inc., is an employer engaged in commerce and in an industry affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Painters Union, Local No. 4, is a labor organization within the meaning of Section 2(5) of the Act.

3. On September 17, by threatening employee Gant Edward Phillips with loss of his job if he pursued a grievance under the collective-bargaining contract regulating his employment, Respondent violated Section 8(a)(1) of the Act.

4. By refusing to employ Gant Edward Phillips beginning September 23, 1980, and thereafter, Respondent violated Section 8(a)(1) of the Act.

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in this case, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

[8] I credit Thomas' testimony that he spoke to Ramos on the telephone and did not speak to Phillips. It follows that Ramos is untruthful when he says Phillips called Thomas. That finding does not mean that I credit either version of the conversation's substance.

[9] It is unnecessary to determine if the discharge also violated Sec. 8(a)(3) *Bunney Bros. Construction Company, supra.*

ORDER[10]

The Respondent, George E. Masker, Inc., San Francisco, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees with discharge because they seek to enforce the collective-bargaining agreement regulating the conditions of their employment regarding the issuance of late paychecks.

(b) Discharging employees because they seek to enforce the collective-bargaining agreement regulating the conditions of their employment.

(c) In any like or related manner restraining or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Immediately offer Gant Edward Phillips reinstatement to his former job or, if that job no longer exists, to a substantially equivalent job, without prejudice to his seniority or other rights and privileges, and make him whole, with interest, for lost earnings as set forth in the Section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its Oakland, California, headquarters, and at its jobsites in California, copies of the attached notice marked "Appendix."[11] Copies of said notice, on forms provided by the Regional Director for Region 32, after being duly signed by its authorized representative, shall be posted immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Deliver to the Regional Director for Region 32 signed copies of said notice in sufficient number to be posted by Painters Union, Local No. 4, if willing.

(e) Notify the Regional Director for Region 32, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all parties had an opportunity to present evidence, the National Labor Relations Board has found that we violated the National Labor Relations Act and we have been ordered to post this notice.

The Act gives all employees the following rights:

> To organize themselves
> To form, join, or support unions
> To bargain as a group through representatives of their own choosing
> To act together for collective bargaining or other mutual aid or protection
> To refrain from any or all such activity except to the extent that the employees' bargaining representative and employer have a collective-bargaining agreement which imposes a lawful requirement that employees become union members.

WE WILL NOT discharge or threaten to discharge employees because they choose to enforce the payroll clauses of our collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL immediately offer to reinstate Gant Edward Phillips to his former job or, if it no longer exists, to a substantially equivalent job, and WE WILL make him whole for any loss of pay he may have suffered by reason of our discriminatory discharge of him on September 23, 1980, together with interest thereon.

GEORGE E. MASKER, INC.

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[10] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[11] In the event this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."